

Where the claimant was not given specific written information about where and how to file an unemployment claim by her employer, she is automatically entitled to have her claim predated to her first week of total unemployment pursuant to G.L. c. 151A, § 62A(g), without any further need to show good cause.

**Board of Review
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Issue ID: 0051 2492 08

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA) to deny unemployment benefits. We review, pursuant to our authority under G.L. c. 151A, § 41, and reverse.

The claimant filed a claim for unemployment benefits with the DUA effective May 17, 2020. She later requested that her claim be predated to April 12, 2020. This request was denied in a determination issued by the DUA on September 29, 2020. The claimant appealed the determination to the DUA hearings department. Following a hearing on the merits attended by the claimant, the review examiner affirmed the agency's initial determination and denied the predate request in a decision rendered on July 27, 2021. We accepted the claimant's application for review.

The predate was denied after the review examiner determined that the claimant did not have good cause for failing to file her claim earlier and, thus, was not eligible to have an earlier effective date of her claim under G.L. c. 151A, §§ 23(b) and 24(c), and 430 CMR 4.01(3) and 4.01(4). Our decision is based upon our review of the entire record, including the recorded testimony and evidence from the hearing, the review examiner's decision, and the claimant's appeal.

The issue before the Board is whether the review examiner's decision, which concluded that the claimant is not entitled to a predate because she received written information from her employer about how and where to file a claim for unemployment benefits, is supported by substantial and credible evidence and is free from error of law.

Findings of Fact

The review examiner's findings of fact are set forth below in their entirety:

1. The claimant worked as a Yoga Instructor.
2. The claimant worked for [Employer A]. The claimant worked for that employer from April 2018 until March 2020. The claimant was paid \$35 per hour. The claimant worked 3 days per week.

3. The claimant worked for the [Employer B] from April 2018 until March 2020. The claimant was paid \$80 to \$90 per week.
4. The claimant was also earning approximately \$140 per week teaching private lessons until she had her surgery.
5. The claimant had surgery on March 9, 2020. The claimant last worked during the first week of March 2020.
6. On March 15, 2020, the claimant was notified by her employers that she could no longer work due to closures related to COVID-19.
7. The claimant continued to be paid by [Employer A] at her regular rate for three weeks after their closure, until sometime in April 2020.
8. The claimant continued to be paid by the [Employer B] at her regular rate after their closure through to June 2020.
9. The claimant was not paid in the position teaching private lessons after her last lesson in March 2020.
10. While working for [Employer A], the claimant did not see any postings on the work premises regarding unemployment insurance.
11. The claimant had never previously filed a claim for unemployment benefits.
12. After separating from work with [Employer A], the claimant received an email communication notifying her that she could file a claim for unemployment insurance benefits.
13. The claimant looked at the DUA website but still did not know if she should file for UI or PUA benefits. The claimant made a call to the Department of Unemployment Assistance but was put on hold. The claimant was unable to remain on hold as she had two children home.
14. The claimant is a single parent with two children who were learning remotely from home.
15. In May 2020, the claimant “managed to get it done” filing her claim on-line, without assistance. The claimant utilized her computer to file that claim.
16. The claimant filed her claim on May 22, 2020. The effective date of the claim is May 17, 2020.
17. The claimant requested a predate of her claim for unemployment benefits.

18. On September 29, 2020, a Notice of [Disqualification] was issued under Section 23(b) of the Law, indicating “After consideration of the facts submitted, it has been determined that your reason for not contacting this office to file your claim earlier does not constitute good cause. It has been determined that without good cause, you failed to apply for benefits in a timely manner.” “A waiting period may not be served nor benefits paid on this claim for any week prior to 5/17/2020.” The claimant filed an appeal to that determination.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the findings are supported by substantial and credible evidence; and (2) whether the review examiner’s ultimate conclusion is free from error of law. Upon such review, the Board adopts the review examiner’s findings of fact and deems them to be supported by substantial and credible evidence. However, as discussed more fully below, we reject the review examiner’s legal conclusion that the claimant failed to establish that she had a good cause reason to allow for an earlier effective date.

The question before the Board is whether the claimant is entitled to a predate of her unemployment claim pursuant to G.L. c. 151A, § 62A(g), which provides, in pertinent part, as follows:

Each employer shall issue to every separated employee, as soon as practicable, but not to exceed 30 days from the last day said employee performed compensable work, written information furnished or approved by said division which shall contain . . . instructions on how to file a claim for unemployment compensation, the address and telephone number of the regional office which serves the recipient, and the telephone number of the teleclaim information line. Delivery is made when an employer provides such information to an employee in person or by mail to the employee’s last known address. The waiting period under section 23 for an employee who did not receive the information required by this paragraph and who failed to file timely for benefits, shall be the Sunday of the initial week such employee would have been eligible to receive unemployment compensation. Each employer shall have the burden of demonstrating compliance with the provisions required herein.

The claimant became separated from her employers on March 15, 2020. Due to some confusion on the claimant’s part, she did not file a claim for benefits until May 22, 2020, and she subsequently requested to have the claim predated to April 12, 2020. The review examiner denied a predate on the grounds that the claimant’s employer had provided her with written information on filing for unemployment insurance. We disagree.

The provisions of G.L. c. 151A, § 62A(g), require an employer provide a claimant with a document approved by DUA containing written information about how to apply for benefits. However, following her separation, the only instruction the claimant received from her employer was an email communication informing her that she could file for benefits. Finding of Fact # 12. At the hearing, the claimant twice confirmed that the email she received from her employer was general in nature and did not contain any information or documentation about *where* or *how* to apply for

benefits.¹ It was, therefore, inappropriate for the review examiner to infer from either the record or Finding of Fact # 12 that the claimant had received written information about applying for benefits within the meaning of G.L. c. 151A, § 62A(g).

In light of these facts, we conclude that the claimant is automatically entitled to have her claim pre-dated. Where the employer failed to provide the claimant with written information about unemployment benefits, there is no additional need under this section of law to show any form of good cause. This is because the statute uses mandatory language (“[the] waiting period . . . for an employee who did not receive the information required . . . shall be the Sunday of the initial week such employee would have been eligible . . .”). The fact that the claimant may have already been aware of her right to apply for unemployment benefits is not a consideration listed in the above-cited statute.

We, therefore, conclude as a matter of law that, in light of G.L. c. 151A, § 62A(g), the claimant is automatically entitled to have her claim pre-dated.

BOSTON, MASSACHUSETTS
DATE OF DECISION - September 1, 2021



Paul T. Fitzgerald, Esq.
Chairman



Michael J. Albano
Member

Member Charlene A. Stawicki, Esq. did not participate in this decision.

If this decision disqualifies the claimant from receiving regular unemployment benefits, the claimant may be eligible to apply for Pandemic Unemployment Benefits (PUA). The claimant may apply at: <https://ui-cares-act.mass.gov/PUA/>. The claimant may also call customer assistance at 877-626-6800 (select the number for your preferred language, then press # 2 for PUA).

**ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS
STATE DISTRICT COURT**

(See Section 42, Chapter 151A, General Laws Enclosed)

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

¹ We have supplemented the findings of fact, as necessary, with the unchallenged evidence before the review examiner. See Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

LSW/rh